

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMES R. HARTE,

Plaintiff,

**ORDER**

-against-

24 Civ. 4994 (NSR) (AEK)

CITY OF NEW ROCHELLE and ORTIZ,  
*an Officer Marshal of the City of New Rochelle,*

Defendants.

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**THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.**

A telephonic conference was held in this matter on May 9, 2025. This Court's rulings from that conference are memorialized below.

1. In an order issued by Chief District Judge Laura Taylor Swain on October 18, 2024, Plaintiff was granted leave to file an amended complaint, within 60 days of the date of that order, that complied with the standards set forth in the order. *See* ECF No. 7. Plaintiff confirmed at the May 9, 2025 conference that the document at ECF No. 13, captioned and docketed as "Affirmation in Support of Summons and Complaint," was intended to serve as Plaintiff's amended complaint. While this filing was received by the Court more than 60 days after Judge Swain's order was issued, the Court hereby excuses the late filing, and accepts the "Affirmation in Support of Summons and Complaint" as the amended complaint in this matter. The document at ECF No. 13 will be treated as the amended complaint, and it is now the operative pleading in this case.

2. Defendants filed an answer to Plaintiff's original complaint, *see* ECF No. 11, even after Judge Swain issued an order dismissing that original pleading. That answer is no longer a valid responsive pleading, because it was addressed to a complaint that is no longer

operative. Accordingly, Defendants must either file an answer to the amended complaint, or file a motion pursuant to Rule 12 of the Federal Rules of Civil Procedure to address the allegations in the amended complaint. Plaintiff response to the amended complaint at ECF No. 13 must be filed by May 23, 2025. If Defendants choose to file a motion, they may do so without first filing a letter requesting a pre-motion conference with the Court.

3. Defendants have agreed to provide Plaintiff with a copy of the transcript of his General Municipal Law Section 50-h examination, as well as copies of the exhibits used during that examination. Accordingly, the Clerk of Court is directed to mark Plaintiff's motion at ECF No. 17 as GRANTED and to terminate that motion.

4. The next telephonic status conference in this matter before Magistrate Judge Krause is hereby scheduled for **Friday, May 30, 2025 at 11:00 a.m.** At that conference, the Court will either set a schedule for discovery (if Defendants choose to answer the amended complaint), or set a complete briefing schedule (if Defendants choose to file a motion in response to the amended complaint). To access the teleconference, please follow these directions: (1) dial the meeting number: 1-855-244-8681; (2) enter the access code: 2312 503 5451; and (3) press pound, followed by pound again (##) to enter the teleconference as a guest. Should either party experience any technical issues with the teleconferencing system, please contact Chambers at (914) 390-4070.

Dated: May 12, 2025  
White Plains, New York

**SO ORDERED.**



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ANDREW E. KRAUSE  
United States Magistrate Judge